

3: CV 01-1254
IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

FORM FOR USE IN APPLICATIONS FOR HABEAS CORPUS UNDER 28 U.S.C. §2254
(EFF.10/18/96)

JAMIR F. BURRELL CB-3765
Name Prison Number

S.C.I. FRACKVILLE, 1111 ALTAMONT BLVD.
Place of Confinement
FRACKVILLE, PA. 17931

JAMIR F. BURRELL PETITIONER
(Full Name Include Name Under Which you were Convicted)

vs.

CASE NO. _____
(Supplied by the Court)

JOSEPH CHESNEY, SUPT. S.C.I. FRACKVILLE RESPONDENT
(Name of Warden, Superintendent, Jailer, or authorized person having custody of Petitioner)

and
PENNSYLVANIA BOARD OF PROBATION AND PAROL FILED
THE DISTRICT ATTORNEY THE COUNTY OF SCRANTON

and JUL - 6 2001
THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

ADDITIONAL RESPONDENT
DEPUTY CLERK

(If petitioner is attacking a judgement which imposed a sentence to be served in the future, petitioner must fill in the name of the state where the judgement was entered. If petitioner has a sentence to be served in the future under Federal judgement which he wishes to attack, he should file a motion under 28 U.S.C. §2255, in the Federal Court which entered the judgment.)

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN STATE CUSTODY

INSTRUCTIONS - READ CAREFULLY

1. This petition must be legibly handwritten or typewritten and signed by the petitioner. Any false statement of a material fact in this petition or in a motion for leave to proceed in forma pauperis may serve as the basis for prosecution and conviction for perjury. All questions must be answered concisely in the proper space on the form. Where more room is needed to answer a question use reverse side of sheet.
2. Additional pages are not permitted. No citation of authorities need be furnished. If briefs or arguments are submitted, they should be submitted in the form of a separate memorandum.
3. Upon receipt of a fee of \$5.00, your petition will be filed if it is in proper order

4. If you do not have the entire necessary filing fee, you may request permission to proceed in forma pauperis, in which event you must complete the forms on the pages eleven and twelve, setting forth information establishing your inability to prepay the full fees and cost or give security therefor. If you wish to proceed in forma pauperis, you must submit an affidavit stating all your assets, and the certification on page thirteen, signed by an authorized prison official. Discharge of debt in a bankruptcy proceeding shall not include a filing fee (or associated cost and expenses), regardless of an assertion of poverty by the debtor or the debtor's status as a prisoner.
5. Only judgements entered by one court may be challenged in a single petition. If you seek to challenge judgements entered by different courts either in the same state or in different states, you must file separate petition as to each court.
6. Your attention is directed to the fact that you must include all grounds for relief and all facts supporting such grounds for relief in the petition you file seeking relief from any judgement of conviction.
7. All state remedies must be exhausted before filing a claim under 28 U.S.C. §2254, however, if a prisoner files such a claim before exhausting all state remedies, the federal court has no authority to deny it on its merits. A federal court, when considering a state prisoner habeas corpus petition, must deem as correct a determination of a factual issue made by a state court, unless the prisoner's rebuts the presumption by clear and convincing evidence. If a petitioner has failed to develop the factual basis of the claim in the state court proceeding, a federal court shall not hold an evidentiary hearing on a habeas corpus claim unless the prisoner shows that:
 - (1) The claim relies on either a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable, or a factual predicate that could not have previously been discovered through the exercise of due diligence; and
 - (2) The facts underlying the claim be sufficient to establish by clear and convincing evidence that but for the constitutional error, no reasonable factfinder would have found the prisoner guilty.
8. There is a one year statute of limitations for filing petitions pursuant to 28 U.S.C. 2254.
9. Federal courts must dismiss claims in a second or successive petition that were presented in a prior petition.
10. Federal courts must dismiss claims in a second or successive petition that were not presented in a prior petition unless:
 - (1) The claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or
 - (2) The factual predicate for the claim could not have been discovered previously through the exercise of due diligence, and the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the petitioner guilty.

Before such a second or successive petition may be filed in the district court, however, the petitioner must move the court of appeals for an Order authorizing the District Court to consider the petition. Petitioner's motion for such an order must be determined by a three judge panel of the court of appeals, which must grant or deny the motion within 30 days. The court of appeals may grant the motion only if it determines that the petition makes a prima facie showing that it satisfies either (1) or (2) above.

- 11 Ineffectiveness of counsel during post-trial proceedings in state court shall not be grounds for relief under 28 U.S.C. 2254.
12. When the petition is fully completed, the original and four copies must be mailed to the Clerk of the United States District Court, whose address is the William J. Nealon Bldg. & U.S. Courthouse, 235 N. Washington Ave. P.O. Box 1148 Scranton, Pennsylvania 18501.
- 13 Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

PETITION

1. (a) Name and location of court which entered the judgement of conviction under attack:

NOT ATTACKING CONVICTION... I AM ATTACKING THE

(b) Name of Prosecutor: UNCONSTITUTIONAL DENIAL OF PAROLE

(c) Prosecution conducted by District Attorney's Office of BY THE

County. PENNSYLVANIA BOARD OF PROBATION AND PAROLE...

2. (a) Date of Judgement of Conviction: _____

(b) Indictment Numbers or Numbers: _____

Term: _____

Criminal Case Number: _____

3. Length of sentence: _____ Sentencing Judge: _____

4. Nature of offense or offenses for which you were convicted: PLEASE SEE "SENTENCE

STATUS SUMMARY SHEET," FOR COMPLETE CONVICTION / SENTENCE
INFORMATION, WHICH IS ATTACHED TO "SEPARATE MEMORANDUM"
AS EXHIBIT, ENCLOSED HERewith...

5. What was your plea? (check one) (a) Not Guilty ☐ (b) Guilty ☐ (c) Nolo Contendere ☐

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment,

Give details: _____

6. Kind of trial: (check one) (a) Jury ☐ (b) Judge Only ☐

7. Did you testify at the trial? Yes ☐ No ☐

8. Did you appeal from the judgement of conviction? Yes ☐ No ☐

9. If you did appeal, answer the following:

(a) Name of Court: _____

(b) Result: _____

(c) Date of Result: _____

(d) If you filed a second appeal, or filed a petition for certiorari in the Supreme Court, give detail:

10. Other than a direct appeal from the judgement of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgement in any court, state or federal?

Yes ☐ No ☐

11. If your answer to 10 was "yes", give the following information:

(a) (1) Name of Court: _____

(2) Nature of Proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result: _____

(6) Date of result: _____

(b) As to any second petition, application or motion, give the same information:

(1) Name of Court: _____

(2) Nature of Proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition or motion:

Yes ☐ No ☐

(5) Result: _____

(6) Date of result: _____

(c) As to any third petition, application or motion, give the same information:

(1) Name of Court _____

(2) Nature of proceeding: _____

(3) Grounds raised: _____

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☐

(5) Result: _____

Date of result: _____

(d) Did you appeal to the highest state court having jurisdiction the result of any action taken on any petition, application or motion?

- (1) First petition, etc. Yes ☐ No ☐
 (2) Second petition, etc. Yes ☐ No ☐
 (3) Third petition, etc. Yes ☐ No ☐

(e) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

12. State concisely every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground.

CAUTION: In order to proceed in the federal court, you must ordinarily first exhaust your state court remedies. You should set them forth in this petition if you wish to seek federal relief. If you fail to set forth all such grounds in this petition, you may be barred from presenting them at a later date.

For information, the following is a list of the most frequently raised grounds for relief in habeas corpus proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you may have other than those listed if you have exhausted all you state court remedies with respect to them. However, you should raise in this petition all available grounds (relating to this conviction) on which you base your allegations that you are being held in custody unlawfully.

If you select one or more of these grounds for relief, you must allege facts in support of the ground or grounds which you choose. Do not check any of the grounds listed below. The petition will be returned to you if you merely check (a) through (j), or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.
- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure, (where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim).
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest, (where the state has not provided a full and fair hearing on the merits of the Fourth Amendment claim).
- (e) Conviction obtained by a violation of the privilege against self-incrimination.
- (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
- (g) Conviction obtained by a violation of the protection against double jeopardy.

(h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.

(i) Denial of effective assistance of counsel.

(j) Denial of right of appeal.

A. Ground one: DENIAL OF PAROLE FOR UNCONSTITUTIONAL REASONS.

Supporting FACTS (tell your story briefly without citing cases or law)

THE PENNSYLVANIA PAROLE BOARD, HAS DENIED YOUR PETITIONER

PAROLE FOR REASONS THAT WILL NEVER CHANGE...

PLEASE SEE ENCLOSED "SEPARATE MEMORANDUM," IN

SUPPORT OF THIS, WRIT OF HABEAS CORPUS...

B. Ground two: DENIAL OF ACCESS TO THE STATE COURTS TO

Supporting FACTS (tell your story briefly without citing cases or law)

CHALLENGE THE IMPROPER PAROLE DENIAL IN VIOLATION

OF YOUR PETITIONERS UNITED STATES CONSTITUTIONAL RIGHTS...

PLEASE SEE ENCLOSED "SEPARATE MEMORANDUM," IN

SUPPORT OF THIS, WRIT OF HABEAS CORPUS...

C. Ground three:

Supporting FACTS (tell your story briefly without citing cases or law)

D. Ground four: _____

Supporting *FACTS* (tell your story briefly without citing cases or law)

13. If any of the grounds listed in 12A, B, C, and D were not previously presented in any other court (state or federal) state briefly what grounds were not so presented, and give your reason for not presenting them:

14. Do you have any petition or appeal now pending in any court, either in state or federal, as to the judgement under attack?

Yes ☐ No ☒

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgement attacked herein:

a) At preliminary hearing: _____

b) At arraignment and plea: _____

c) At trial: _____

d) At sentencing: _____

e) On appeal: _____

f) In any post-conviction proceeding: _____

g) On appeal from any adverse ruling in a post-conviction proceeding: _____

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at the same time?

Yes ☐ No ☐

a) If so, give name and location of court which imposed sentence to be served in the future: _____

b) And give date and length of sentence to be served in the future: _____

c) Have you filed, or do you contemplate filing, any petition attacking the judgement which imposed the sentence to be served in the future?

Yes ☐ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgement under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future: _____

(b) And give date and length of sentence to be served in the future: _____

(c) Have you filed, or do you contemplate filing, any petition attacking the judgement which imposed the sentence to be served in the future?

Yes ☐ No ☐

Wherefore, petitioner prays that the Court grant petitioner relief to which he may be entitled in the proceeding.

Signature of Attorney (if any)

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Jamir F. Burrell #B-376
Signature of Petitioner

Executed on: the _____ day of _____, _____.

Signature of Attorney (if any)

**IN THE UNITED STATE DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

STATEMENT IN SUPPORT OF REQUEST TO PROCEED IN FORMA PAUPERIS

PETITIONER

vs.

RESPONDENT(S)

I, _____, declare under the penalty of perjury, that I am the petitioner in the above entitled case; that in support of my motion to proceed without being required to prepay any or all of the required fees, cost or give security therefor at this time, I declare that because of my poverty I am unable to pay any or all of the costs of said proceeding or to give security therefor at this time and that I believe I am entitled to relief.

1. Are you presently employed? Yes ☐ No ☐

a. If the answer is "Yes", state the amount of your salary or wages per month, and give the name and address of your employer.

b. If the answer is "No", state the date of last employment and the amount of the salary and wages per month which you received.

2. Have you received within the past twelve months any money from any of the following sources:

a. Business, profession or form of self-employment? Yes ☐ No ☐

b. Rent payments, interest or dividends? Yes ☐ No ☐

c. Pensions, annuities or life insurance payments? Yes ☐ No ☐

d. Gifts or inheritances? Yes ☐ No ☐

e. Any other sources? Yes ☐ No ☐

If the answer to any of the above is "Yes", describe each source of money and state the amount received from

each during the past twelve months. _____

3. Do you own cash, or do you have money in a checking or savings account? Yes ☐ No ☐

If the answer is "Yes", state the total value of the items owned. _____

4. Do you own any real estate, stocks, bonds, notes, automobiles, or other valuable property (exclude ordinary household furnishings and clothing)? Yes ☐ No ☐

If the answer is "Yes", describe the property and state its approximate value. _____

5. List the persons who are dependent upon you for support, state your relationship to those persons, and indicate how much you contribute toward their support. _____

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this _____ day of _____, _____.

Petitioner's Signature

CERTIFICATE

I hereby certify that the petitioner herein has the sum of \$ _____ on account to his credit at the _____ institution where he is confined. I further certify that petitioner likewise has the following securities to his credit according to the records of said _____

institutions: _____

Authorized Prison Official

Dear Sir/Madam;

Enclosed for filing is an original and FIVE (5) copies of petitioner's JAMIR F. BURRELL
WRIT OF HABEAS CORPUS. Please file this the enclosed documents, time stamp the extra copy and
return to me at the below given address. Your petitioner prays that your office and the Honorable Court will
liberally interpret the contents of this action in light of the fact that the petitioner is a layman and therefore
deficient in the knowledge of the standard expectation of a qualified legal counsel. Accordingly, if these
matters have been erroneously filed the petitioner respectfully requests that they be properly forwarded
pursuant to Pa.R.A.P. 751 and 42 Pa. C.S.A. 5103 (a). JAMIR F. BURRELL #CB-3765
1111 ALTAMONT BLVD
FRACKVILLE, PA. 17931

Thank you for your time, assistance and cooperation in this matter.

Respectfully submitted

Date: 7-3-01

s/ Jamir Burrell

IN RE:

Dear Sir/Madam:

Enclosed for filing is an original and 5 copies of Petitioner's JAMIE F. BURRELL
WRIT OF HABEAS CORPUS. Kindly file this document, time stamp the extra copy, and return
to me at the below given address.

Respectfully submitted,

Jamie Burrell

1111 Altamonte Blvd.
Frackville, PA 17931-2699

Date: 7-3-01